

LYNCHBURG CITY COUNCIL  
Agenda Item Summary

MEETING DATE: **September 12, 2006**

AGENDA ITEM NO.: 14

CONSENT:

REGULAR: **X**

CLOSED SESSION:  
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Zoning Ordinance Amendment: Section 35.1-13, Variances**

RECOMMENDATION: Approval of the Zoning Ordinance Amendment.

SUMMARY: The purpose of the amendment is to keep the Zoning Ordinance current with the requirements of the State Code. The amendment would clarify that property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance. Structures that have been granted a variance may not be expanded. The Planning Commission recommended approval of the amendments because:

- The proposed amendment would clarify that property upon which a variance has been granted shall be treated as conforming.
- Amendment will ensure compliance of the Zoning Ordinance with State Code requirements effective July 1, 2006.
- City staff currently interprets the Zoning Ordinance in this way. The amendment will clarify, but will not change the way City staff interprets the Zoning Ordinance for properties upon which a variance has been granted.

PRIOR ACTION(S):

August 9, 2006: Planning Division recommended approval of the Zoning Ordinance amendment.  
Planning Commission recommended approval (5-0, with 1 member absent, Worthington) of the Zoning Ordinance amendment.

FISCAL IMPACT: N/A

CONTACT:

Tom Martin/ 455-3909

ATTACHMENT(S):

- Ordinance
- Planning Commission Report
- State Code §15.2-2309
- PC Minutes
- Speaker Sign-Up sheet

REVIEWED BY: lkp

## ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-13 OF THE CODE OF THE CITY OF LYNCHBURG, THE AMENDED SECTION RELATING TO ZONING VARIANCES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG that in order to promote the public necessity, convenience, general welfare, and good zoning practice that Section 35.1-13 of the Code of the City of Lynchburg, 1981, as amended, is hereby amended and reenacted as follows:

### Sec. 35.1-13. Variances.

(a) Definitions. Variance means, in the application of the zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by conditional zoning.

(b) Intent. Variances may be granted to the regulations of this ordinance when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardships; provided that the spirit of this ordinance shall be preserved and substantial justice done.

(c) Conditions. When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this ordinance.

No such variance shall be authorized by the board of zoning appeals (or the zoning administrator) unless it finds:

- (1) That the strict application of the ordinance would produce undue hardship.
- (2) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (3) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- (4) That within the intent and purpose of this ordinance, the variance, if granted, is the minimum variance necessary to afford relief.

The zoning administrator may authorize a variance, not to exceed one (1) foot from the required dimension, for a building setback for one and two-family dwellings. The zoning administrator shall give written notice of the request for such a variance to the adjacent property owner(s) at the expense of the petitioner, as provided for in Section 35.1-19. The adjacent property owner(s) shall be given an opportunity to respond to the request within twenty-one (21) days of the date of the notice. If any adjoining property owner(s) object to the said request within the time specified above, the request shall be transferred to the board of zoning appeals for a

decision. The cost of this notification shall be taxed to the applicant, unless waived by the city, at the standard rate as determined by the city council's current fee schedule for each written notice.

No such variance shall be authorized by the board except after notice and hearing as required by Section 35.1-19.

No variances shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

No variance shall be authorized to the sign requirements contained within this ordinance for commercially or industrially zoned land that would exceed the "Rules and Regulations Controlling Outdoor Advertising in Zoned and Unzoned Commercial and Industrial Areas" adopted by the State of Virginia and the Virginia department of highways and transportation.

In authorizing a variance, the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond, payable to the City of Lynchburg, in such amount and for such period of time as the board may designate, to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the use or structure permitted by the variance may not be expanded.

It shall be a further requirement that the decision or determination of the board of zoning appeals shall set forth each required finding and such other findings as shall be appropriate in each specific grant of a variance, and in each denial thereof, which of the findings have not been satisfied. In any such case, each finding shall be supported by evidence in the record.

(d) Flood hazard considerations:

(1) Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures listed herein;

(3) Variances shall only be issued upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) The city shall notify the applicant in writing over the signature of the zoning administrator that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage, and such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required below;

(6) The city shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual report submitted to the administrator.

(e) Lapse of variance. If a building permit for construction authorized by a variance under this action shall not have been applied for within six (6) months of the granting of such variance, the variance so granted shall become void.

(f) Fees for variances. See Section 35.1-12.

Adopted:

Certified:

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Clerk of Council

106L

The Department of Community Development  
City Hall, Lynchburg, VA 24504 434-455-3900

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**To:** Planning Commission  
**From:** Planning Division  
**Date:** August 9, 2006  
**Re:** **Zoning Ordinance Amendment: Section 35.1-13, Variances.**

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**I. PETITIONER**

City of Lynchburg, Planning Commission, 900 Church Street, Lynchburg, VA 24504  
**Representative(s):** Tom Martin, AICP, City Planner, 900 Church Street, Lynchburg, VA 24504

**II. LOCATION**

The proposed amendment would affect the entire City.  
**Property Owner:** N/A

**III. PURPOSE**

The purpose of the amendment is to keep the Zoning Ordinance current with requirements of the State Code. The amendment would clarify that property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the use or structure permitted by the variance may not be expanded.

**IV. SUMMARY**

- The proposed amendments would clarify that property upon which a variance has been granted shall be treated as conforming.
- City staff currently interprets the Zoning Ordinance in this way. The amendment will clarify, but will not change the way City staff interpret the Zoning Ordinance for properties upon which a variance has been granted.
- Amendment is required by the State Code revisions effective July 1, 2006.

**The Planning Division recommends adoption of the proposed Zoning Ordinance Amendment.**

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**V. FINDINGS OF FACT**

**Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recognizes that the Zoning Ordinance has several structural and text problems. **(pg 5.10)** Ensuring that the Zoning Ordinance is current with State Code requirements will help but not eliminate these problems.

1. **Zoning.** The current Zoning Ordinance was adopted in 1978. Amendments to the Zoning Ordinance to ensure compliance with the State Code are needed on a periodic basis.
2. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the proposed amendment.
3. **Surrounding Area.** N/A
4. **Site Description.** N/A
5. **Proposed Use of Property.** N/A
6. **Traffic and Parking.** N/A
7. **Storm Water Management.** N/A
8. **Emergency Services.** N/A
9. **Impact.** The amendment would clarify that property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the use or structure permitted by the variance may not be expanded. The amendment will not change the way City staff currently interprets the Zoning Ordinance for properties upon which a variance has been granted.

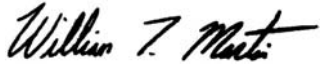
10. Technical Review Committee. N/A

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**VI. PLANNING DIVISION RECOMMENDED MOTION(s):**

**Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of amending Section 35.1-13, Variances, to state that property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the use or structure permitted by the variance may not be expanded.**

This matter is respectfully offered for your consideration.



William T. Martin, AICP  
City Planner

pc: Mr. L. Kimball Payne, III, City Manager  
Mr. Walter C. Erwin, City Attorney  
Mr. J. Lee Newland, Director of Engineering  
Capt. Michael L. Thomas, Fire Marshal  
Lt. Danny R. Marks, Lynchburg Police Department Field Operations Bureau  
Capt. Todd Swisher, Lynchburg Police Department North Division  
Capt. J.P. Stokes, Lynchburg Police Department East Division  
Capt. Al Thomas, Lynchburg Police Department South Division  
Mr. Gerry L. Harter, Traffic Engineer  
Mr. Robert Drane, Building Commissioner  
Mr. Keith Wright, Zoning Official  
Mr. Robert S. Fowler, Zoning Official  
Mrs. Erin B. Hawkins, Environmental Planner

**VII. ATTACHMENTS**

- 1. Zoning Ordinance Amendment, Section 35.1-13, Variances**
- 2. State Code, § 15.2-2309. Powers and duties of boards of zoning appeals.**

### **Sec. 35.1-13. Variances.**

(a) Definitions. Variance means, in the application of the zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by conditional zoning.

(b) Intent. Variances may be granted to the regulations of this ordinance when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardships; provided that the spirit of this ordinance shall be preserved and substantial justice done.

(c) Conditions. When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this ordinance.

No such variance shall be authorized by the board of zoning appeals (or the zoning administrator) unless it finds:

- (1) That the strict application of the ordinance would produce undue hardship.
- (2) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (3) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- (4) That within the intent and purpose of this ordinance, the variance, if granted, is the minimum variance necessary to afford relief.

The zoning administrator may authorize a variance, not to exceed one (1) foot from the required dimension, for a building setback for one and two-family dwellings. The zoning administrator shall give written notice of the request for such a variance to the adjacent property owner(s) at the expense of the petitioner, as provided for in Section 35.1-19. The adjacent property owner(s) shall be given an opportunity to respond to the request within twenty-one (21) days of the date of the notice. If any adjoining property owner(s) object to the said request within the time specified above, the request shall be transferred to the board of zoning appeals for a decision. The cost of this notification shall be taxed to the applicant, unless waived by the city, at the standard rate as determined by the city council's current fee schedule for each written notice.

No such variance shall be authorized by the board except after notice and hearing as required by Section 35.1-19.

No variances shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

No variance shall be authorized to the sign requirements contained within this ordinance for commercially or industrially zoned land that would exceed the "Rules and Regulations Controlling Outdoor Advertising in Zoned and Unzoned Commercial and Industrial Areas" adopted by the State of Virginia and the Virginia department of highways and transportation.

In authorizing a variance, the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond, payable to the City of Lynchburg, in such amount and for such period of time as the board may designate, to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the use or structure permitted by the variance may not be expanded.

It shall be a further requirement that the decision or determination of the board of zoning appeals shall set forth each required finding and such other findings as shall be appropriate in each specific grant of a variance, and in each denial thereof, which of the findings have not been satisfied. In any such case, each finding shall be supported by evidence in the record.

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(3) Variances shall only be issued upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) The city shall notify the applicant in writing over the signature of the zoning administrator that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage, and such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required below;

(6) The city shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual report submitted to the administrator.

(e) Lapse of variance. If a building permit for construction authorized by a variance under this action shall not have been applied for within six (6) months of the granting of such variance, the variance so granted shall become void.

(f) Fees for variances. See Section 35.1-12. (Ord. No. O-78-352, 12-12-78; Ord. No. O-82-189, §1, 9-14-82; Ord. No. O-88-009, § 1, 1-12-88; Ord. No. O-90-223, 7-10-90, eff. 7-1-90; Ord. No. O-00-023, 2-8-00)



## **§ 15.2-2309. Powers and duties of boards of zoning appeals.**

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.
2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

***Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the use or the structure permitted by the variance may not be expanded.***

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.
4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when

giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

(Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555; 1997, c. 587; 2000, c. 1050; 2002, c. 546; 2003, c. 403; 2006, c. 264.)

MINUTES FROM THE AUGUST 9, 2006 PLANNING COMMISSION MEETING. THESE MINUTES HAVE NOT BEEN REVIEWED OR APPROVED BY THE COMMISSION.

Consideration of amending Section 35.1-13, Variances, 4 of the Zoning Ordinance to provide that property upon which a property owner has been granted a variance shall be treated as conforming as required by Section 15.2-2309 of the Code of Virginia.

After discussion, Commissioner Sale made the following motion, which was seconded by Commissioner Oglesby and passed by the following vote:

“That the Planning Commission recommends to City Council approval of amending Section 35.1-13, Variances, to state that property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the use or structure permitted by the variance may not be expanded.”

AYES:	Barnes, Flint, Hamilton, Oglesby, Sale	5
NOES:		0
ABSTENTIONS:		0
ABSENT:	Worthington	1